IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2254 OF 2003

M/s. Janaki Enterprises ... Petitioner

Versus

Mr. Aditya K. Garg and Ors. Respondents

Mr. B.N. Rai for Petitioner.

Ms. Gauri Godse for Respondent No. 2.

CORAM : F.I. REBELLO,J.
DATED : OCTOBER 19, 2005

P.C.

. Rule. Heard forthwith.

. This Petition is directed against the order dated 21.1.2003 passed in Misc. Civil Application No. 108 of 2002 whereby the learned Additional District Judge was pleased to allow the appeal preferred by Respondent No. 2 in the present petition. The present petitioner was respondent No. 1 before the appellate Court. By the order the appellate court has been pleased to set aside the order of injunction granted in favour of the

Petitioner herein.

. The Petitioner No. 1 is the Plaintiff in Suit No. 1627 of 2001 before the Court of Civil Judge, Junior Division, Thane. An application was taken out for temporary injunction against the respondent herein. It was the case of the Petitioner herein that the respondent cannot claim any right based on documents dated 18.12.1999 or 29.12.1999 in respect of two flats which are subject matter of the suit. The case of the Petitioner was that Respondent No. 1 had merely given loan and for securing due repayment, two flats on 6th Floor of Shri Salyam Apartment, 121/122, S. No. 232, H. No. 1 (Part), Maziwada, Thane (West) was registered in the name of Respondent No. 2. It was the case of the Petitioner herein that Respondent No. 2 had no right and consequently could not have been created any further right in Respondent No. 2 herein. The trial court set out the facts as pleaded and contentions of the parties and the only reasoning given was in Paragraph 8. No finding was recorded as to possession. Inspite of that granted injunction as prayed for. Aggrieved Respondent No.

2 preferred the appeal. The appellate Court fixed points for determination and after considering the matter, in Paragraph 11 held that Respondent No. 1 had put Respondent No. 2 in possession of the flats after having received valuable consideration. The learned appellate court also recorded that Respondent No. 2had taken loan from H.D.F.C. and the Petitioner acting through power of attorney had given no objection for the said loan. Respondent No. 2 had parted with money in favour of Respondent No. 1. The learned appellate court further observed that the agreement dated 18.12.1999 between the appellant and respondent No. 1 was executed as required under the Maharashtra Ownership of Flats Act and was duly registered with the Sub Registrar. By that agreement the Respondent No. 1 was to receive from the Petitioner sum of Rs.11,05,000/-. There was writing in pen that the agreement is prepared temporarily for term loan of Rs. 3 lacs. The cheque issued by Respondent No. 1 in favour of Petitioner was for Rs.11,05,000/- which was dishonoured. After considering this material on record and the fact that the trial court had given

no reasons for the grant of injunction, set aside the order.

. It is this order vacating injunction granted in favour of the Petitioner which is subject matter of the present petition. The Appellate court has rightly addressed itself to the predicates required for grant of injunction and has answered them against the Petitioner herein. On failure by the trial court to consider the material on record and to address itself to the correct tests it was open to the first appellate court to have reappreciated the material. The findings on reappreciation cannot be said to be perverse and or based on no material. Once that be the case, this will not be a fit case for this court to interfere with the impugned order in the exercise of its extra ordinary jurisdiction.

. Apart from that, merely because Section 115 is not available, ipso facto does not mean that this court in every grant or refusal of interim injunction must interfere in exercise of extra ordinary jurisdiction. That should be sparingly

done. Instant case is not one such case. In the light of that there is no merit in this petition. Rule discharged. No order as to costs.

(F.I. REBELLO,J.)